

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 19, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE APRIL 25, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1629

Introduced by Senator Speier

(Principal coauthor: Assembly Member Lieber)

(Coauthor: Assembly Member Karnette)

February 24, 2006

An act to add Chapter 7 (commencing with Section 12500) to Part 2 of Division 2 of the Public Contract Code, relating to state contracts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1629, as amended, Speier. Public contracts: the Federal Laboratory Contracting Act.

The State Contract Act governs contracting between state agencies and private contractors, and sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies in overseeing and implementing state contracting procedures and policies.

This bill would enact the Federal Laboratory Contracting Act to modify the existing contracting procedures and policies to authorize a state agency that contracts with a federally funded research and development center, as defined, or a field center, as defined, to make contract payments in advance, ~~indemnify, to the extent permitted by state law, the center, as provided, and reimburse the center for the actual costs incurred in performing the contracted services.~~ *This bill would not allow a state agency that enters into a prime contract with a federally funded research and development center or a field center to indemnify the center with respect to products liability, intellectual property, and general liability claims, as specified. This bill would not allow a state agency to audit the records of any federally funded research and development center or field center, but instead would authorize a state agency to rely on the services of any cognizant federal audit agency, as defined.* This bill would also require the Governor to designate the Secretary of State and Consumer Services as the state representative for purposes of communicating and negotiating with the representatives of the United States Department of Energy, the National Aeronautics and Space Administration (NASA), federally funded Department of Energy and NASA research and development centers, and NASA field centers, as provided. This bill would specify that the Regents of the University of California would not be considered a state agency for the purposes of this act, as provided.

This bill would set forth legislative findings and declarations regarding existing policies and procedures governing state contracts with federally funded Department of Energy and NASA research and development centers and NASA field centers located in California.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 7 (commencing with Section 12500) is
- 2 added to Part 2 of Division 2 of the Public Contract Code, to
- 3 read:

1 CHAPTER 7. THE FEDERAL LABORATORY CONTRACTING ACT

2
3 12500. This chapter shall be known and may be cited as the
4 Federal Laboratory Contracting Act.

5 12501. The Legislature finds and declares all of the
6 following:

7 (a) Technological advances are an important part of
8 California's economy and, therefore, it would be wise for state
9 agencies to contract, in a facile and efficient manner, with
10 federally funded Department of Energy (DOE) and National
11 Aeronautics and Space Administration (NASA) research and
12 development centers and NASA field centers located in
13 California that are often at the forefront of science and
14 technology.

15 (b) As the major funding agency and owner of several research
16 and development centers located in California, DOE allows
17 outside parties to contract with the centers but requires the
18 centers, when initiating and finalizing any contracts with outside
19 parties, to adhere to rigorous policies and procedures specified by
20 federal laws and regulations. NASA adheres to similar federal
21 laws and regulations when initiating and finalizing contracts
22 between its research and development centers or field centers in
23 California and outside parties. The State of California has its own
24 laws, regulations, and procedures governing state contracts. The
25 research and development centers and field centers owned or
26 owned and operated by DOE and NASA have attempted to
27 contract with state agencies and departments in California but
28 have had minimal success. Conflicting provisions in federal and
29 state laws, regulations, and policies, and seemingly unachievable
30 compromises appear to be the major limiting factors in the
31 successful negotiation of contracts between the federally funded
32 centers and California state agencies and departments.

33 12501.5. (a) The Governor shall designate the Secretary of
34 State and Consumer Services as the state's representative for
35 purposes of communicating and negotiating with representatives
36 of the United States Department of Energy, National Aeronautics
37 and Space Administration, federally funded DOE and NASA
38 research and development centers in California, and NASA field
39 centers in California regarding any issue that may affect a
40 contractual relationship between the state and these federal

1 entities. The Secretary of State and Consumer Services may
2 delegate this responsibility to the Director of the Department of
3 General Services if the secretary views such delegation as
4 necessary to advance the successful negotiation of contracts
5 between the state and one or more of those federal entities.

6 (b) The Secretary of State and Consumer Services or his or her
7 designee shall develop policies and procedures to encourage and
8 enable the contracting process with federally funded DOE and
9 NASA research and development centers and NASA field
10 centers and shall ~~create a master contract~~ *develop model contract*
11 *language* that is available for use by any state agency or
12 department in negotiating a contract with one of these centers.
13 The Regents of the University of California shall not be
14 considered a state agency for the purposes of this chapter, and
15 specifically shall not be covered as prime contractor with the
16 DOE for management of DOE laboratories.

17 12502. (a) Notwithstanding any other law, a state agency that
18 enters into a prime contract with a federally funded DOE or
19 NASA ~~research~~ *research* and development center or NASA field
20 center, or that enters into a prime contract with another entity
21 that, in turn, issues a subcontract ~~with~~ *to* a federally funded DOE
22 or NASA research and development center or a NASA field
23 center located in California may, if requested by the contracting
24 party, ~~do any of the following:~~

25 (1) ~~Make~~ *make* contract payments to the center for contracted
26 services in advance.

27 (2) ~~To the extent permitted by state law, indemnify the center~~
28 ~~with respect to product liability, intellectual property, and general~~
29 ~~liability claims arising out of the activities to be carried out by~~
30 ~~the center pursuant to the contract.~~

31 (3) ~~Reimburse the center for the actual costs incurred by the~~
32 ~~center in rendering its services under the contract with the state~~
33 ~~agency, up to the contract ceiling amount.~~

34 (b) *Notwithstanding any other law, a state agency that enters*
35 *into a prime contract with a federally funded DOE or NASA*
36 *research and development center or NASA field center, or that*
37 *enters into a prime contract with another entity that, in turn,*
38 *issues a subcontract to a federally funded DOE or NASA*
39 *research and development center or NASA field center located in*
40 *the state may not indemnify the center with respect to products*

1 *liability, intellectual property, and general liability claims*
2 *arising out of the activities to be carried out by the center*
3 *pursuant to the contract.*

4 *(c) Notwithstanding any other law, a state agency shall not*
5 *audit the records of any federally funded DOE or NASA research*
6 *and development center or NASA field center, but the state*
7 *agency may rely on the services of any cognizant federal audit*
8 *agency, including the Defense Contract Audit Agency, the United*
9 *States Government Accountability Office, the DOE Office of*
10 *Inspector General, and the NASA Office of Inspector General, to*
11 *satisfy auditing requirements.*

12 ~~(b)~~

13 *(d) For purposes of this chapter:*

14 *(1) “Federally funded research and development center”*
15 *means a federally funded research and development center as*
16 *defined in Subpart 2.1 of Part 2 of Subchapter A of Chapter 1 of*
17 *Title 48 of the Code of Federal Regulations.*

18 *(2) “NASA field center” means a field center identified as*
19 *such by NASA and authorized by Title III of the Space Act of*
20 *1958.*

21 ~~*(e) A state agency shall not audit the records of any federally*~~
22 ~~*funded DOE or NASA research and development center, or a*~~
23 ~~*NASA field center, but it may rely on the services of a cognizant*~~
24 ~~*federal audit agency, including the Defense Contract Audit*~~
25 ~~*Agency, the United States Government Accounting Office or the*~~
26 ~~*United States Departmental Inspector General to satisfy its*~~
27 ~~*auditing requirements.*~~

28 SEC. 2. This act is an urgency statute necessary for the
29 immediate preservation of the public peace, health, or safety
30 within the meaning of Article IV of the Constitution and shall go
31 into immediate effect. The facts constituting the necessity are:

32 In order for California state agencies and departments to be
33 able to contract, in a facile and efficient manner, with federally
34 funded Department of Energy and NASA research and
35 development centers and NASA field centers located in this state
36 for purposes of developing new technologies that may protect
37 public health and welfare, it is necessary that this act take effect
38 immediately.

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